

Morris James LLP

Richard K. Herrmann
302.888.6816
rherrmann@morrisjames.com

April 9, 2008

VIA EFILING AND HAND DELIVERY

The Honorable Sue L. Robinson
United States District Court
District of Delaware
844 King Street
Wilmington, Delaware 19801

Re: *SRI International v. ISS and Symantec, D. Del., C.A. No. 04-1199-SLR*

Your Honor:

On behalf of Defendant Symantec Corporation, and further to my letter of September 8, 2006, I write to update the Court regarding the reexamination of SRI's patents-in-suit¹ by the United States Patent and Trademark Office.

All of the claims in SRI's patents currently stand rejected by the USPTO in initial office actions. To summarize the ongoing proceedings in the USPTO:

In late 2006, in response to a series of requests filed by Symantec, the USPTO ordered *ex parte* reexamination of each of SRI's four patents-in-suit.² The USPTO determined that prior art cited in Symantec's requests for reexamination raised new and substantial questions as to the patentability of each of the claims in SRI's patents.

In early 2008, the USPTO issued a series of initial Office Actions rejecting all claims of SRI's patents-in-suit. The claims of the '203 patent were rejected under 35 U.S.C. § 103 as being obvious over *Emerald 1997* in view of *Intrusive Activity 1991*. The claims of the '615 patent were rejected under 35 U.S.C. § 103 as being obvious over *Emerald 1997* in view of *Intrusive Activity 1991* and *NetRanger Manual*. The claims of the '212 patent were rejected under 35 U.S.C. § 102(b) as being anticipated by *Emerald 1997* and under the doctrine of obviousness-type double patenting in view of the '203 and '615 patent claims.³ The claims of

¹ U.S. Patent Nos. 6,484,203 ("the '203 patent"), 6,711,615 ("the '615 patent"), 6,708,212 ("the '212 patent"), and 6,321,338 ("the '338 patent").

² Reexamination Nos. 90/008,125 ('203 patent), 90/008,113 ('615 patent), 90/008,098 ('212 patent), 90/008,123 ('338 patent).

³ As the Court is aware, the Federal Circuit recently affirmed that all claims of the '212 patent are anticipated by *Emerald 1997* and therefore invalid. *SRI Int'l, Inc. v. Internet Sec. Sys.*, 511 F.3d 1186, 1188 (Fed. Cir. 2008).

The Honorable Sue L. Robinson
April 9, 2008
Page 2

Morris James_{LLP}

the '338 patent were rejected under 35 U.S.C. §§ 102(b) and 103 as being anticipated and/or obvious in view of multiple references, including *Network NIDES, Emerald 1997, JiNao Report* and *NetRanger Manual*. On March 18, 2008, SRI responded to the office actions concerning the '203 and '615 patents.

At the present time, all four reexamination proceedings concerning SRI's patents-in-suit are still pending in the USPTO. Copies of the reexamination filings are available at the Court's request.

Symantec continues to appreciate the Court's attention to these matters.

Respectfully,

/s/ **Richard K. Herrmann**

Richard K. Herrmann, I.D. No. 405
rherrmann@morrisjames.com

RKH/tp

cc: Dr. Peter T. Dalleo, Clerk of the Court (via hand delivery)
John Horvath, Esq. (via email)
Howard G. Pollack, Esq. (via email)
Richard L. Horwitz, Esq. (via email)
David Moore, Esq. (via email)
Holmes Hawkins, III, Esq. (via email)